

Message Text

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ACTION SNM-05

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FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC 6626

UNCLAS SECTION 1 OF 2 KUALA LUMPUR 7530

E. O. 11652: N/A
TQGS: SNAR, MY
SUBJ: NARCOTICS LAWS

REF: STATE 170187

1. THE BASIC MALAYSIAN LAW RELATING TO NARCOTICS OFFENSES IS THE DANGEROUS DRUGS ORDINANCE, 1952. SECTIONS 1, 2 AND 3 OF THIS REPORT ARE BASED ON THAT ORDINANCE AS WELL AS AN ANALYSIS OF ENFORCEMENT PRACTICE.

2. (1) POSSESSION. A) THE STANDARD PENALTY PRESCRIBED FOR CONVICTION OF POSSESSION OF MOST KINDS OF NARCOTICS IS A FINE OF NOT MORE THAN M\$20,000 (US\$8,000) OR IMPRISONMENT OF NOT MORE THAN FIVE YEARS OR BOTH. (THE MAXIMUM FINE FOR POSSESSION OF RAW AND PREPARED OPIUM, COCA LEAVES, POPPY STRAW AND SOME TYPES OF CANNABIS IS M\$10,000.) HOWEVER, CONVICTION OF ANY OFFENSE UNDER THE DANGEROUS DRUGS ORDINANCE, INCLUDING POSSESSION, IF IT INVOLVES FIVE OR MORE GRAMMES OF HEROIN OR MORPHINE, RENDERS THE OFFENDER LIABLE TO IMPRISONMENT FOR A TERM OF THREE TO FOURTEEN YEARS AND WHIPPING WITH NOT LESS THAN SIX STROKES OF THE ROTAN. B) THERE IS NO LEGALLY SPECIFIED QUALIFYING AMOUNT FOR OPERATION OF POSSESSION OFFENSE, AND COURTS WILL CONVICT FOR POSSESSION OF MINUTE AMOUNTS.
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C) PENALTIES FOR POSSESSION ARE LESS SEVERE THAN PENALTIES FOR TRAFFICKING (SEE BELOW).

3. (2) TRAFFICKING. A) THE DANGEROUS DRUGS ORDINANCE COVERS TRAFFICKING IN ALL ILLICIT SUBSTANCES.
B) SECTION 39B OF THE ORDINANCE READS, IN PART:
QUOTE (1) NO PERSON SHALL, ON HIS OWN BEHALF OR

ON BEHALF OF ANY OTHER PERSON, WHETHER OR NOT SUCH PERSON IS IN WEST MALAYSIA--

(A) TRAFFIC IN A DANGEROUS DRUG;

(B) OFFER TO TRAFFIC IN A DANGEROUS DRUG; OR

(C) DO OR OFFER TO DO AN ACT PREPARATORY TO OR FOR THE PURPOSE OF TRAFFICKING IN A DANGEROUS DRUG.

(2) ANY PERSON WHO CONTRAVENES ANY OF THE PROVISIONS OF SUBSECTION (1) SHALL BE GUILTY OF AN OFFENSE AGAINST THIS ORDINANCE AND SHALL BE PUNISHED ON CONVICTION WITH DEATH OR IMPRISONMENT FOR LIFE AND SAHL, IF HE IS NOT SENTENCED TO DEATH, ALSO BE LIABLE TO WHIPPING UNQUOTE. BAIL CAN BE DENIED TO PERSONS ARRESTED FOR NARCOTICS TRAFFICKING.

D) THE DANGEROUS DRUGS ORDINANCE DEFINES TRAFFICKING AS QUOTE IN RELATION TO A DANGEROUS DRUG...MANUFACTURING, SELLING, GIVEIN ADMINSTERING, TRANSPORTING, SENDING, DELIVERING, PROCURING, SUPPLYING OR DISTRIBUTING OTHERWISE THAN UNDER THE AUTHORITY OF THIS ORDINANCE OR ANY OTHER WRITTEN LAW UNQUOTE. THE ORDINANCE FURTHER PROVIDES THAT QUOTE ANY PERSON WHO IS FOUND IN POSSESSION OF 100 GRAMMES OF HEROIN OR MORPHINE, OR 1,000 GRAMMES OF PREPARED OPIUM OR 5 KILOGRAMMES OF RAW OPIUM OR 200 GRAMMES OF CANNABIS OR CANNABIS UNCLASSIFIED

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RESIN OR MORE IN WEIGHT OTHERWISE THAN IN ACCORDANCE WITH THE AUTHORITY OF THIS ORDINANCE OR ANY OTHER WRITTEN LAW SAHL BE PRESUMED, UNTIL THE CONTRARY IS PROVED, TO BE TRAFFICKING IN THE SAID DRUG UNQUOTE.

D) THERE IS NO CRIMINAL OFFENSE RELATING TO CONSPIRACY TO TRAFFIC, IMPORT OR EXPORT, EXCEPT AS NOTED IN SECTION B). ABOVE.

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4. (3) CULTIVATION, PRODUCTION, ELABORATION.
A) IT IS ILLEGAL TO CULTIVATE CANNABIS, COCA OR
OPIUM POPPY PLANTS WITHOUT THE AUTHORIZATION OF
THE MINISTER OF HEALTH. THE PENALTY FOR VIOLATION
IS A FINE NOT EXCEEDING M\$10,000 (US\$4,000),
IMPRISONMENT NOT EXCEEDING FOUR YEARS, OR BOTH.
IN PRACTICE, AUTHORIZATION IS NOT GIVEN EXCEPT
FOR EXPERIMENTAL MEDICAL PURPOSES. B) IT IS ILLEGAL
FOR ANY PERSON TO QUOTE MANUFACTURE, OR CARRY ON
ANY PROCESS IN THE MANUFACTURE OF UNQUOTE ANY
DANGEROUS DRUG AS DEFINED IN THE ORDINANCE, UNLESS
DULY LICENSED OR AUTHORIZED TO DO SO.

5. (4) FINANCIAL. A) THERE IS AT PRESENT NO LAW
RELATING TO FINANCIAL SUPPORT FOR ILLICIT
NARCOTICS ACTIVITIES, ALTHOUGH LAW ENFORCEMENT
OFFICIALS ARE CONSIDERING DRAFTING SUCH A LAW.
B) HOWEVER, CURRENCY CONTROL LAWS ARE FEW
IN THIS RELATIVELY FREE ECONOMY, WHICH IS HEAVILY
DEPENDENT ON FOREIGN TRADE, AND CONTROL OF THE
FINANCIAL ASPECTS OF NARCOTICS TRAFFICKING WOULD
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BE DIFFICULT.

6. (5) CRIMINAL PROCEDURE. A) A SUSPECT CAN BE HELD
FOR TWO WEEKS BEFORE BEING CHARGED BY THE POLICE
BEFORE A COURT. CONSULAR ACCESS IS PERMITTED
TO FOREIGN ARRESTEES DURING THIS PERIOD. THE
AMERICAN CONSUL IS NORMALLY NOTIFIED OF THE
ARREST OF AMERICAN CITIZENS WITHIN A DAY OF THE
ARREST. B) BECAUSE THE PRELIMINARY INQUIRY
STAGE OF A PROSECUTION VARIES GREATLY FROM CASE
TO CASE, IT IS DIFFICULT TO DESCRIBE THE QUOTE
CUSTOMARY LENGTH UNQUOTE OF PRE-TRIAL DETENTION.

THIS HAS LASTED FOR SEVERAL YEARS IN CASES WE
ARE FAMILIAR WITH OR CAN BE CONCLUDED WITHIN
WEEKS. C) LIKEWISE, THERE IS NO QUOTE USUSLA
LENGTH UNQUOTE FOR TRIALS OR THE APPELLATE
PROCESS, ALTHOUGH THIS NORMALLY TAKES LONGER
THAN IN THE UNITED STATES. MALAYSIA HAS JUST
REORGANIZED ITS LOWER COURT SYSTEM AND HAS
REPLACED JURY TRIALS WITH DECISIONS BY JUDGES IN
MANY TYPES OF CASES IN ORDER TO SPEED UP THE
JUDICIAL PROCESS. D) THERE IS A PUBLIC DEFENDER
SYSTEM IN MALAYSIA, BUT IT IS NORMALLY AVAILABLE ONLY
IN THE LARGE CITIES. MOST AMERICANS ARRESTED ARE
HELD AND TRIED IN THESE CITIES, HOWEVER. E) THERE
IS NO PAROLE PROVISION AND SENTENCES ARE NORMALLY
SERVED TO THE
PRISON. ID DEPENDING ON THE
JUDGE, MINOR FOREIGN TVCYP GTP CCMFFENDERS ARE
SOMETIMES FINED AND EXPELLED AFTER THEIR TRIAL
INSTEAD OF SERVING A JAIL TERM. HOWEVER, WE KNOW
OF SOME FOREIGNERS WHO HAVE SERVED SIX-MONTH
JAIL SENTENCES FOR POSSESSION OF ONE OR TWO
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MARIJUANA CIGARETTES. MILLER

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